Mac A. Fleming
President

Freddie N. Simpson
Secretary-Treasurer

Brotherhood of Maintenance of Way Employes
Affiliated with the A.F.L.-C.I.O. and C.L.C

February 3, 2003
(*Electronic Submission*)

Docket Clerk
DOT Central Docket Management Facility
Room PL-401(Plaza Level)
400 7th Street, SW
Washington, DC 20590

Re: Docket No. FRA-2002-13967

Dear Sir or Madam:

The Brotherhood of Maintenance of Way Employes (BMWE), a rail labor organization representing 50,000 railroad workers who build, maintain, inspect, and repair railroad track and related structures throughout North America, oppose the granting of a Waiver of Compliance to the Montana Rail Link (MRL) in the above referenced docket.

MRL seeks a waiver of compliance from the provisions of the Track Safety Standards, 49 CFR 213.121(b), to allow skirted 115-pound, six-hole joint bars with cracks between the outermost holes to remain in service in Classes 3 through 5 track. The trackage subject to this waiver petition consists of approximately 20 miles of MRL main line between Billings and Laurel, Montana and between Helena and Tobin, Montana.

MRL states in its petition for waiver that "these six-hole bars which develop cracks between the outermost bolt holes are comparable in strength and stability to their conventional 115-pound, four-hole unskirted joint bars and present no additional safety hazard." MRL submits as justification for their waiver petition that "the bars are very similar or exactly the same as those subject to a BNSF waiver petition in Docket Number FRA-2001-10653."

In Docket FRA-2001-10653, BNSF conducted "bench-testing" on a limited number of selected defective joint bars and presented the results in support of its petition, stating "there is no statistical difference between the strength and structural stability of the 6-hole, skirted angle bar and the 115-pound, 4-hole, unskirted angle bar."

As in FRA-2001-10653, BMWE is opposed to the granting of a waiver in Docket FRA-2002-13967. BMWE remains unconvinced that the bench tests conducted by BNSF "prove" that 115-pound, cracked joint bars do not present a significant safety hazard. Bench testing under carefully controlled and supervised conditions on a limited number of cracked joint bars do not "prove" that such cracked joint bars are safe for continued use in Class 3 through 5 track as BNSF, and now MRL, contend. BMWE believes a significant flaw exists in the interpretation of the cited test results in that, while such tests may in fact demonstrate comparable strength and stability between 4-hole bars and 6-hole skirted bars with cracks between the outermost holes, the tests do not address the potential risks associated with horizontal propagation of cracks originating from the original fracture under field conditions. BNSF, and now MRL, make the mistaken assumption that all cracks and stress fractures occurring between the outer two holes of a 6-hole skirted bar will propagate in a clean vertical fracture, resulting in nothing more that a standard 4-hole bar with no further defects. BMWE believes this to be a flawed assumption and asserts that the potential for horizontal propagation of cracks and stress fractures into and through adjacent bolt holes presents an unacceptable safety risk which will only increase exponentially over time. This safety risk can only be eliminated by replacing cracked or fractured joint bars, as soon as such cracks or fractures are detected, with non-defective joint bars in compliance with 49 CFR 213.121(b) of the Track Safety Standards.

For the reasons stated above, and in the interest of railroad safety, MRL's request for a waiver of compliance in the above-referenced docket should be denied in its entirety.

Respectfully,

Mac A. Fleming (signed)

President